

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

SHANNON SPENCER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

PROVIDENCE ST. JOSEPH HEALTH
FOUNDATION, a Washington nonprofit
corporation doing business as PROVIDENCE,
and DOES 1-20,

Defendant.

No. 2:23-cv-1723

**NOTICE OF REMOVAL TO
FEDERAL COURT**

[CLERK'S ACTION REQUIRED]

TO: Clerk, United States District Court for the Western District of Washington

AND TO: Plaintiff Shannon Spencer, and his attorneys of record.

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant, Providence St. Joseph Health Foundation (“**Defendant**”), hereby removes this action, originally noticed to be filed in the Superior Court of the State of Washington in and for the County of King (the “**State Court Action**”), to the United States District Court for the Western District of Washington at Seattle. In support of this removal, Defendant states as follows:

1. As set forth below, the case is properly removed to this Court under 28 U.S.C. § 1441 because the Court has jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d) (“**CAFA**”), in that this matter is a civil action in which the amount in controversy

1 exceeds the sum of \$5,000,000 exclusive of costs and interest, there are more than 100 members
2 in the putative class, and the matter is between citizens of different states.

3 2. By filing this Notice of Removal, Defendant does not intend to waive, and hereby
4 reserves, any objection as to venue, the legal sufficiency of the claims alleged in the State Court
5 Action, and all other defenses. Defendant reserves the right to supplement and amend this Notice
6 of Removal.

7 **Commencement and Pendency of Action in State Court**

8 3. Plaintiff, Shannon Spencer (“**Plaintiff**”), noticed and served a Class Action
9 Complaint for Damages (the “**Complaint**”) in King County Superior Court against Defendant.
10 Plaintiff has not yet filed the State Court Action in King County Superior Court. However, Plaintiff
11 served the Complaint on Defendant on October 12, 2023.

12 4. A true and correct copy of the Complaint in the State Court Action is attached
13 hereto as **Exhibit A**. These materials comprise “all process, pleadings and orders served” upon
14 Defendant in the State Court Action. *See* 28 U.S.C. § 1446(a).

15 5. In the Complaint, Plaintiff seeks to certify a proposed class defined as:
16 All individuals who, from January 1, 2023 through the date notice is
17 provided to the Class, applied for a job opening in the State of
18 Washington with Defendant, where the job posting did not disclose
19 the wage scale or salary range for the position.
20 *See* Ex. A, Complaint ¶ 19. The Complaint asserts three (3) causes of action against Defendant on
21 behalf of Plaintiff and the putative class, including: (i) violation of RCW 49.58.110; (ii) injunctive
22 relief; and (iii) declaratory relief. *See id.* at ¶¶ 27-36.

23 **Basis for Removal**

24 6. CAFA creates federal jurisdiction over lawsuits in which “the matter in controversy
25 exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in
26 which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant,”

1 and involves a putative class that consists of more than 100 members. 28 U.S.C. §§ 1332(d)(2)(A)
 2 and (d)(5). These three requirements are satisfied.

3 Diversity of Citizenship

4 7. 28 U.S.C. § 1332(d)(2)(A) requires that “any member of a class of plaintiffs is a
 5 citizen of a State different from any defendant.” For purposes of this section, a corporation is
 6 “deemed to be a citizen of every State and foreign state by which it has been incorporated and of
 7 the State or foreign state where it has its principal place of business.” *See* 28 U.S.C. § 1332(c)(1).

8 8. As noted above and according to the Complaint, the putative class includes:

9 All individuals who, from January 1, 2023 through the date notice is
 10 provided to the Class, applied for a job opening in the State of Washington
 11 with Defendant, where the job posting did not disclose the wage scale or
 12 salary range for the position.

13 *See* Ex. A, Complaint ¶ 19.

14 9. While Defendant asserts that Plaintiff has failed to state a legally tenable class or
 15 claim against Defendant, taking Plaintiff’s definition as proper for purposes of jurisdiction only,
 16 Defendant reviewed the applicant submissions for its job openings in the State of Washington
 17 during the above-stated time period and found that at least one applicant (and in fact numerous
 18 applicants) is a citizen of a state other than Washington.

19 10. Defendant is a non-profit Washington corporation with its principal place of
 20 business located at 1801 Lind Ave. SW, Renton, Washington. *See id.* at ¶¶ 3-4.

21 11. Because at least one member of the purported class is a citizen of a different state
 22 than at least one defendant, the diversity requirement set forth in 28 U.S.C. § 1332(d)(2) is
 23 satisfied.

24 The Putative Class Exceeds 100 Members

25 12. As noted above and according to the Complaint, the putative class includes:

26 All individuals who, from January 1, 2023 through the date notice is

provided to the Class, applied for a job opening in the State of Washington with Defendant, where the job posting did not disclose the wage scale or salary range for the position.

See Ex. A, Complaint ¶ 19.

13. Again setting aside Defendant's objections to the alleged class definition, Defendant's records show that the number of putative class members (all individuals who, from January 1, 2023, through the present who applied for a job opening in the State of Washington with Defendant) well exceeds 100. As such, the putative class size requirement set forth in 28 U.S.C. § 1332(d)(5) is satisfied.

The Amount in Controversy Exceeds \$5,000,000

14. Although the Complaint does not set forth the dollar amount prayed for, and Defendant denies all liability alleged in the Complaint, if Plaintiff's claims were substantiated and completely successful, the aggregate amount in dispute would exceed \$5,000,000.

15. Plaintiff alleges three (3) causes of action on a class basis during the putative class period, which include:

- a) Violation of RCW 49.58.110;
- b) Injunctive relief; and
- c) Declaratory relief.

See Ex. A, Complaint ¶¶ 27-36.

16. While Defendant denies that Plaintiff or any putative class member is entitled to any relief, in determining the amount in controversy for CAFA jurisdiction, the Court must assume Plaintiff's allegations as set forth in the Complaint are true and that a jury will return a verdict in favor of Plaintiff on all his claims. *See Cain v. Hartford Life & Acc. Ins.*, 890 F.Supp.2d 1246, 1249 (C.D. Cal. 2012). Thus, the "amount in controversy" is the total "amount at stake in the underlying litigation" and must include damages (compensatory, punitive, or otherwise), the cost of complying with an injunction, and attorneys' fees awarded under fee shifting statutes. *Gonzalez*

1 *v. CarMax Auto Superstores, LLC*, 840 F.3d 644, 648 (9th Cir. 2016). A defendant need only put
 2 forth a plausible allegation that the amount in controversy exceeds the jurisdictional threshold;
 3 evidentiary submissions are not required. *See Dart Cherokee Basin Operating Co. v. Owens*, 135
 4 S.Ct. 547, 554 (2014); *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015).

5 17. Here, Plaintiff seeks remedies under RCW 49.58.070 for actual damages or
 6 statutory damages of \$5,000, whichever is greater, along with his attorneys' fees through final
 7 judgment. *See* Ex. A, Complaint, at 7 ("Request for Relief").

8 18. Statutory Damages. Plaintiff seeks \$5,000 in statutory damages under RCW
 9 49.58.070. *Id.* Although Defendant believes that the Complaint does not plead a legally tenable
 10 class or claim, potential statutory damages exceed the \$5,000,000 threshold for CAFA based on
 11 the number of potential class members as Plaintiff appears to define them. Defendant alleges that,
 12 based on a review of its records, the purported class has over 1,000 members and the statutory
 13 damages for over 1,000 members exceeds the CAFA threshold amount (1,001 members * \$5,000
 14 statutory damages = \$5,005,000).

15 19. Attorneys' Fees. Future attorneys' fees may also be included in the amount in
 16 controversy. *See Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413 (9th Cir. 2018). For purposes
 17 of determining the amount in controversy under CAFA, class action counsel attorney fees could
 18 be assumed to equal 25% of the amount of damages alleged by Plaintiff. *See Staton v. Boeing Co.*,
 19 327 F.3d 938, 968 (9th Cir. 2003) ("This circuit has established 25% of the common fund as a
 20 benchmark award for attorney fees.") (*quoting Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029
 21 (9th Cir. 1998)). The alleged amount claimed for statutory class damages multiplied by 25% results
 22 in an additional \$1,251,250 in fees for the purposes of removal calculations.

23 20. Under CAFA, "the claims of all members of a putative class shall be aggregated"
 24 to determine the amount in controversy. *See* 28 U.S.C. § 1332(d)(6). Given that the Complaint
 25 seeks the above-described damages, attorney's fees, and other relief, the matter in controversy
 26 exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and therefore satisfies the

jurisdictional minimum set forth in 28 U.S.C. § 1332(d)(2).

This Notice of Removal is Timely Filed

21. Notice of removal must generally be filed “within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.” *See* 28 U.S.C. §§ 1446(b)(1) and 1453(b).

22. Defendant was served in the State Court Action with a copy of the Summons and Complaint by personal service on its registered agent on October 12, 2023. Ex. A. This Notice of Removal is being filed within 30 days of that date.

The Removal Venue Is Proper

23. Removal is properly made to the United States District Court for the Western District of Washington at Seattle under 28 U.S.C. 1441(b), because the Superior Court for the State of Washington, County of King, where the State Court Action is currently pending, is within the Western District of Washington.

Defendant Has Sufficient Consent

24. Defendant is not required to investigate the identity of the unnamed defendants nor to obtain their consent for removal. *See* 28 U.S.C. § 1441(a); *Necombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998). In any event, no Doe defendants have been served. Defendant is not required to obtain consent to remove from defendants who have not been served. *See Salveson v. Western States Bankcard Ass'n*, 731 F.2d 1423, 1429 (9th Cir. 1984), superseded by statute on other grounds as stated in *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1392 (9th Cir. 1988). Therefore, Defendant has sufficient consent to remove the State Court Action.

Notice to Plaintiff and State Court

25. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being

promptly served upon counsel for Plaintiff and a copy is being sent to the Clerk of the Superior Court of the State of Washington, County of King (this filing is done for purposes of technical compliance with the removal statute as Plaintiff has not yet filed the Complaint in the state court).

26. Court file. Defendant is in compliance with 28 U.S.C. § 1446(a), 28 U.S.C. § 1447(b), and CR 101(b). Because Plaintiff has not yet filed the Complaint in the King County Superior Court, there are no copies of process, pleadings, and orders filed in the state court action. All pleadings served on Defendant are attached hereto as Ex. A.

WHEREFORE, Defendant respectfully requests removal of the State Court Action from the Superior Court of the State of Washington, County of King, to the United States District Court for the Western District of Washington at Seattle.

DATED November 10, 2023

K&L GATES LLP

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By: s/ Patrick M. Madden

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CERTIFICATE OF SERVICE

I certify that on November 10, 2023, I caused the foregoing document to be served on the parties listed below in the manner indicated:

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- ☒ Via U.S. 1st Class Mail
☐ Via Hand Delivery
☐ Via Overnight Delivery
☐ Via Facsimile
☒ Via Email
☒ E-Service

DATED November 10, 2023, at Seattle, Washington.

By: s/ Abigail D. Belscher
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